

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

TERRY BARNES,

Petitioner,

vs.

No. CIV 19-0514 JB\KRS

MARK BOWEN and HECTOR
BALDERAS,

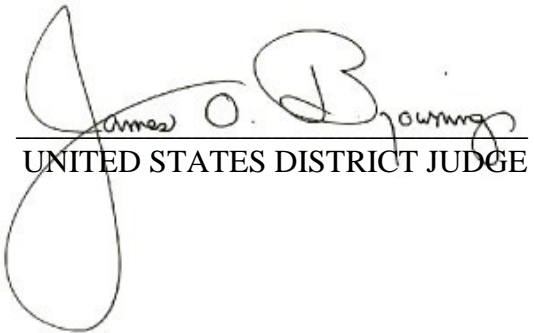
Respondents.

MEMORANDUM OPINION AND ORDER OF VOLUNTARY DISMISSAL

THIS MATTER comes before the Court on the Petitioner's Motion to withdraw Habeas Corpus Petition Filed in the state of New Mexico, filed February 10, 2020 (Doc. 10)("Motion"). The Court construes the Motion as a notice of voluntary dismissal under rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure. That rule gives petitioners an absolute right to dismiss the action without prejudice "before the opposing party serves either an answer or a motion for summary judgment." Fed. R. Civ. P. 41(a)(1)(A)(i). See Janssen v. Harris, 321 F.3d 998, 1000 (10th Cir. 2003)(noting rule 41(a)(1)(i) grants plaintiffs "an absolute right to dismiss without prejudice"). This case is still in the screening phase, and the Respondents have not filed a responsive pleading or dispositive motion. The Court, therefore, will grant the Motion and dismiss the Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus By a Person In State Custody, filed June 3, 2019 (Doc. 1), without prejudice. The Court also will deny as moot the pending Motion to Expedite Court's Decision, filed November 4, 2019 (Doc. 7), and the Motion for Status of Case, filed November 6, 2019 (Doc. 8).

IT IS ORDERED that: (i) the Motion to Withdraw Habeas Corpus Petition, filed February 10, 2020 (Doc. 10), is granted; (ii) this action is dismissed without prejudice; (iii) the Court will

enter a Final Judgment closing this civil case; (iv) the Motion to Expedite Court's Decision, filed November 4, 2019 (Doc. 7), is denied; and (v) the Motion for Status of Case, filed November 6, 2019 (Doc. 8), is denied.



UNITED STATES DISTRICT JUDGE

Parties:

Terry Barnes
Northeast New Mexico Detention Facility
Clayton, New Mexico

Petitioner pro se